
HOUSE BILL 3074

State of Washington 59th Legislature 2006 Regular Session

By Representatives Serben, Lantz, Haler, McCoy, Chase, Dunn, Green and Morrell

Read first time 01/19/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to determining the military status of defendants;
2 and amending RCW 38.42.050.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 38.42.050 and 2005 c 254 s 5 are each amended to read
5 as follows:

6 (1) This section applies to any civil action or proceeding in which
7 a service member or his or her dependent is a defendant and does not
8 make an appearance under applicable court rules or by law.

9 (2) In any action or proceeding covered by this section, the court,
10 before entering judgment for the plaintiff, shall require the plaintiff
11 to file with the court an affidavit:

12 (a) Stating whether the defendant is in military service, or is a
13 dependent of a service member in military service, and showing
14 necessary facts to support the affidavit; or

15 (b) If the plaintiff is unable to determine whether the defendant
16 is in military service or is a dependent of a service member in
17 military service, stating that the plaintiff is unable to determine
18 whether the defendant is in military service or is a dependent of a
19 service member in military service.

1 (3)(a) To determine whether or not a defendant is in the military
2 service or a dependent of a person in the military service under this
3 chapter, or whether a defendant is in the military service under the
4 federal servicemembers civil relief act (50 U.S.C. App. 501 et seq.),
5 the plaintiff may serve on or mail via first-class mail to the
6 defendant a written notice in substantially the following form:

7 "NOTICE: State and federal law provide protections to defendants
8 who are on active duty in the military service, and to their
9 dependents. To qualify, the service member must be an active duty
10 member of the United States uniformed forces, or a member of the
11 national guard or a military reserve component under a call to active
12 service for a period of more than thirty consecutive days, or a
13 commissioned officer of the public health service or the national
14 oceanographic and atmospheric administration. Dependents of a service
15 member are the service member's spouse, the service member's minor
16 child, or an individual for whom the service member provided more than
17 one-half of the individual's support for one hundred eighty days
18 immediately preceding an application for relief.

19 One protection provided is the protection against the entry of a
20 default judgment in certain circumstances. If you are: (1) An active
21 duty service member, including a member of the national guard or a
22 military reserve component under a call to active service for a period
23 of more than thirty consecutive days; or (2) the dependent of such a
24 member of the national guard or a military reserve component; or (3) a
25 commissioned officer of the public health service or the national
26 oceanographic and atmospheric administration, you should notify the
27 plaintiff or the plaintiff's attorneys in writing of your status as
28 such within twenty days of the receipt of this notice. If you fail to
29 do so, then a court may presume that you are not an active duty service
30 member, a dependent of an active duty member of the national guard or
31 reserves, or a commissioned officer of the public health service or the
32 national oceanographic and atmospheric administration, and proceed with
33 the entry of an order of default and/or a default judgment without
34 further proof of your status. Your response to the plaintiff or
35 plaintiff's attorneys about your status does not constitute an
36 appearance for jurisdictional purposes in any pending litigation nor a
37 waiver of your rights under state or federal law."

1 (b) If the notice is either served on the defendant twenty or more
2 days prior to an application for an order of default or a default
3 judgment, or mailed to the defendant more than twenty-three days prior
4 to such application, and the defendant fails to timely respond, then
5 for purposes of entry of an order of default or default judgment the
6 court may presume that the defendant is not in the military service, or
7 a dependent of a person in the military service, or a commissioned
8 officer of the public health service or the national oceanographic and
9 atmospheric administration.

10 (c) Nothing prohibits the plaintiff from allowing a defendant more
11 than twenty days to respond to the notice, or from amending the notice
12 to so provide.

13 (4) If in an action covered by this section it appears that the
14 defendant is in military service or is a dependent of a service member
15 in military service, the court may not enter a judgment until after the
16 court appoints an attorney to represent the defendant. If an attorney
17 appointed under this section to represent a service member or his or
18 her dependent cannot locate the service member or dependent, actions by
19 the attorney in the case do not waive any defense of the service member
20 or dependent or otherwise bind the service member or dependent.

21 ~~((4))~~ (5) In an action covered by this section in which the
22 defendant is in military service or is a dependent of a service member
23 in military service, the court shall grant a stay of proceedings until
24 one hundred eighty days after termination of or release from military
25 service, upon application of defense counsel, or on the court's own
26 motion, if the court determines that:

27 (a) There may be a defense to the action and a defense cannot be
28 presented without presence of the defendant; or

29 (b) After due diligence, counsel has been unable to contact the
30 defendant or otherwise determine if a meritorious defense exists. The
31 defendant's failure to communicate or cooperate with counsel after
32 having been contacted is not grounds to find that counsel has been
33 unable to contact the defendant or that counsel has been unable to
34 determine if a meritorious defense exists.

35 ~~((5))~~ (6) No bar to entry of judgment under subsection ~~((3))~~
36 (4) of this section or requirement for grant of stay under subsection
37 ~~((4))~~ (5) of this section precludes the entry of temporary orders in
38 domestic relations cases. If a court or administrative tribunal enters

1 a temporary order as allowed under this subsection, it shall include a
2 finding that failure to act, despite the absence of the service member,
3 would result in manifest injustice to the other interested parties.
4 Temporary orders issued without the service member's participation
5 shall not set any precedent for the final disposition of the matters
6 addressed therein.

7 ~~((+6))~~ (7) If a service member or dependent who is a defendant in
8 an action covered by this section receives actual notice of the action,
9 the service member or dependent may request a stay of proceedings
10 pursuant to RCW 38.42.060.

11 ~~((+7))~~ (8) A person who makes or uses an affidavit permitted under
12 this section knowing it to be false, is guilty of a class C felony.

13 ~~((+8))~~ (9) If a default judgment is entered in an action covered
14 by this section against a service member or his or her dependent during
15 the service member's period of military service or within one hundred
16 eighty days after termination of or release from military service, the
17 court entering the judgment shall, upon application by or on behalf of
18 the service member or his or her dependent, reopen the judgment for the
19 purpose of allowing the service member or his or her dependent to
20 defend the action if it appears that:

21 (a) The service member or dependent was materially affected by
22 reason of that military service in making a defense to the action; and

23 (b) The service member or dependent has a meritorious or legal
24 defense to the action or some part of it.

25 ~~((+9))~~ (10) If a court vacates, sets aside, or reverses a default
26 judgment against a service member or his or her dependent and the
27 vacating, setting aside, or reversing is because of a provision of this
28 chapter, that action does not impair a right or title acquired by a
29 bona fide purchaser for value.

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